

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EPICE CORPORATION,)
)
 Plaintiff,)
)
 v.)
)
 THE LAND REUTILIZATION)
 AUTHORITY OF THE)
 CITY OF ST. LOUIS, et. al.,)
)
 Defendants.)

**DEFENDANT, THE CITY OF ST. LOUIS, MISSOURI, MOTION FOR
LEAVE OF COURT TO FILE MOTION FOR SUMMARY JUDGMENT**
REGARDING COUNT III OF PLAINTIFF'S FOURTH AMENDED COMPLAINT

Comes now Defendant, the City of St. Louis, Missouri (hereinafter, "Defendant" or "City"), and for its Motion for Leave of Court to File Motion for Summary Judgment Regarding Count III of Plaintiff's Fourth Amended Complaint. In support of its *Motion*, Defendant states the following:

1. In the Court’s Opinion, Memorandum, and Order of December 4, 2009 (Doc. 145) (hereinafter, “Court’s Order”), the Court ordered that Defendants’ “Motion for Partial Summary Judgment [] is granted as to Counts I, II and IV and denied on Count III.”. (*Court’s Order*, pg. 24).

2. Count III of Plaintiff's Fourth Amended Complaint is an action under Section 67.450, RSMo against only Defendant, City of St. Louis, for a wrongful demolition of a fence located at the subject property. (Doc. 94, pgs. 22-24).

3. The Court has set the case for trial on February 16, 2010.

4. In the Court's Order, the Court stated that regarding Count III of Plaintiff's Fourth Amended Complaint, "there are still material issues of fact regarding whether the fence was a structure contemplated under § 67.450 RSMo and whether notice of the demolition of the fence was constitutionally sufficient". (*Court's Order*, pg. 24).

5. Defendant respectfully requests the Court to allow it to file its Motion for Summary Judgment regarding Count III of Plaintiff's Fourth Amended Complaint. Defendant believes that there are no undisputed material issues of fact and the law is clear. Defendant contends that this is a claim that can be resolved pursuant to summary judgment.

6. Pursuant to the Court's Order, the Court stated that regarding Count III of Plaintiff's Fourth Amended Complaint, "there are still material issues of fact regarding whether the fence was a structure contemplated under § 67.450 RSMo and whether notice of the demolition of the fence was constitutionally sufficient." (*Court's Order*, pg. 24). By the filing of the motion for summary judgment, this will address the Court's concern that the notice of the condemnation of the fence was constitutionally sufficient.

7. If the Court allows Defendant's filing of its Motion for Summary Judgment regarding Count III of Plaintiff's Fourth Amended Complaint, Defendant would suggest that the Court allow time to responsive pleadings to said motion and continuing the February 16, 2010 trial date to either a date certain or uncertain, based on the Court's discretion.

WHEREFORE, Defendant, the City of St. Louis, Missouri, prays that this Court grant its Motion for Leave of Court to File Motion for Summary Judgment Regarding Count III of Plaintiff's Fourth Amended Complaint, and for all other relief this Court deems just and proper.

Respectfully submitted,

PATRICIA A. HAGEMAN,
City Counselor for the City of St. Louis

/s/ Robert M. Hibbs
Robert M. Hibbs #537348
Assistant City Counselor
Donald G. Dylewski #34218
Associate City Counselor
Attorneys for Defendant
City of St. Louis, Missouri
1200 Market, Room 314
St. Louis, MO 63103
622-3361 (Telephone)
622-4956 (Fax)

CERTIFICATE OF SERVICE

A copy of the foregoing was filed electronically on the 2nd day of February, 2010, with the Clerk of Court to be served by operation of the Court's electronic filing system upon all parties of record.

/s/ Robert M. Hibbs
Robert M. Hibbs #537348